

Invitation for Bids

To:-----

Re: Supply, installation and maintenance of medical oxygen plant for Aga Khan University Hospital, Nairobi, Kenya

[28th June 2021]

The Aga Khan University Hospital Nairobi has received financing from KfW toward the cost of supply, installation and maintenance of medical oxygen plant for Aga Khan University Hospital, Nairobi, Kenya and intends to apply part of the proceeds toward payments under the contract(s) for supply, installation and maintenance of medical oxygen plant for Aga Khan University Hospital, Nairobi, Kenya.

The Aga Khan University Hospital Nairobi now invites sealed Bids from selected eligible Bidders for supply, installation and maintenance of medical oxygen plant for Aga Khan University Hospital, Nairobi, Kenya. As one of the selected bidders you are herewith invited to submit a bid.

Bidding will be conducted by means of KfW Limited Competitive Bidding (LCB) procedure.

Please find attached the complete set of bidding documents.

Interested preselected eligible Bidders may obtain further information from *Anju Agarwal* (anju.agarwal@aku.edu) and Pieter.riemersma@gopa-infra.de

The bidding documents received from the Purchaser are not transferable.

Bids must be delivered to below address:

The Director,

Purchasing and Supply Chain Management Division,

Aga Khan University Hospital, Nairobi,

P.O Box 30270-00100

Nairobi, Kenya

The deadline for the submission of bids is:

Date: **11th August 2021**

Time: **4.00pm** E.A.T

Late Bids will be rejected.

Bids will be opened in a public session in the presence of the Bidders' designated representatives.

All Bids must be accompanied by a Bid Security.

German Financial Cooperation with East Africa

**Support to Health Facilities in collaboration with the Aga
Khan University (COVID 19 response program AKU)
BMZ NO.2020 36 788**

Bidding Documents

for

**the supply, installation and maintenance of medical oxygen
plant for Aga Khan University Hospital, Nairobi, Kenya.**

Purchaser: The Aga Khan University Hospital Nairobi

JUNE 2021.

Procurement no. 507109

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PART 1 – Bidding Procedures

Section I. Instructions to Bidders

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Section I. Instructions to Bidders¹

A. General

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| 1. Scope of Bid | <p>1.1 In connection with the Invitation for Bids, specified in the Bid Data Sheet (BDS), the Purchaser, as specified in the BDS, issues these Bidding Documents for the Procurement of Goods and Related Services incidental thereto as specified in Section VII, Schedule of Requirements. The name, identification and number of lots (contracts) of this International Competitive Bidding (ICB) are specified in the BDS.</p> <p>1.2 Throughout these Bidding Documents:</p> <ul style="list-style-type: none"> (a) The term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt; (b) If the context so requires, “singular” means “plural” and vice versa; and (c) “Day” means calendar day. |
| 2. Source of Funds | <p>2.1 The Purchaser specified in the BDS has applied for or received financing (hereinafter called “funds”) from the KfW Entwicklungsbank (hereinafter called “the KfW”), toward the project named in the BDS. The Purchaser intends to apply a portion of the funds to eligible payments under the contract for which these Bidding Documents are issued.</p> |
| 3. Corrupt and Fraudulent Practices | <p>3.1 KfW requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.</p> <p>3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents to provide information and permit KfW or an agent appointed by KfW to inspect on site all accounts, records and other documents relating to bid submission and contract performance (in the case of award), and to have them audited by auditors or agents appointed by KfW.</p> |
| 4. Eligible Bidders | <p>4.1 A Bidder may be a firm that is a private entity, a state-owned entity- subject to ITB 4.3 - or any combination of such entities in the form of a joint venture (“JV”) under an existing JV Agreement or with the intent to enter into such an agreement supported by a letter of intent to execute a JV Agreement, in accordance with ITB 11.2. In the case of a JV, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The Bidder shall nominate an authorized representative who shall have the authority to conduct all business for and on behalf of Bidder and any and all its members, if the Bidder is a JV,</p> |

¹ [Text in this Section shall not be modified.]

during bidding and contract execution (in the event the Bidder is awarded the Contract). Unless specified in the BDS, there is no limit on the number of members in a JV.

- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
- (a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - (b) Receives or has received any direct or indirect subsidy from another Bidder; or
 - (c) Has the same legal representative as another Bidder; or
 - (d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
 - (e) Participates in more than one bid in this bidding process, both as an individual firm and as a JV member. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
 - (f) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the bid; or
 - (g) Any of its affiliates has been hired (or is proposed to be hired) by the Purchaser for the Contract implementation; or
 - (h) Has a close business or family relationship with a professional staff of the Purchaser (or of the project implementing agency, or of a recipient of a part of the funds) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the KfW throughout the procurement process and execution of the contract.
- 4.3 The KfW's eligibility criteria to bid are described in Section V, Eligibility criteria.
- 4.4 A Bidder shall not be under suspension from bidding by the Purchaser as the result of the execution of a Bid-Securing Declaration.

- 4.5 This bidding is open only to eligible Bidders, who will be subject to qualification.
- 4.6 A Bidder shall provide such evidence of eligibility satisfactory to the Purchaser, as specified in ITB 17.1 or as the Purchaser shall reasonably request.
- 5. Eligible Goods and Related Services**
- 5.1 All the Goods and Related Services to be supplied under the Contract and financed by the KfW shall have their origin in any country in accordance with Section V, Eligibility Criteria.
- 5.2 For purposes of this Clause, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

B. Contents of Bidding Documents

6. Sections of Bidding Documents

PART 1 - Bidding Procedures

- Section I. Instructions to Bidders (ITB);
- Section II. Bid Data Sheet (BDS);
- Section III. Qualification and Evaluation Criteria;
- Section IV. Bidding Forms;
- Section V. Eligibility Criteria;
- Section VI. KfW Policy - Corrupt and Fraudulent Practices and Social and Environmental Responsibility;

PART 2 - Supply Requirements

- Section VII. Schedule of Requirements;

PART 3 - Contract

- Section VIII. General Conditions of Contract (GC);
- Section IX. Particular Conditions of Contract (PC);
- Section X. Contract Forms.

- 6.1 The Invitation for Bids issued by the Purchaser is not part of the Bidding Documents.
 - 6.2 Unless obtained directly from the Purchaser, the Purchaser is not responsible for the completeness of the Bidding Documents, responses to requests for clarification or Addenda to the Bidding Documents in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Purchaser shall prevail.
 - 6.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its Bid all information or documentation as is required by the Bidding Documents.
- 7. Clarification of Bidding Documents**
- 7.1 A Bidder requiring any clarification of the Bidding Documents shall contact the Purchaser in writing. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than 14 (fourteen) days prior to the deadline for submission of bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Documents
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of bids, the Purchaser may amend the Bidding Documents by issuing addenda.
- Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Purchaser. The Purchaser shall also promptly publish the addendum on the [website \(https://hospitals.aku.edu/nairobi/AboutUs/Pages/RFPs.aspx\)](https://hospitals.aku.edu/nairobi/AboutUs/Pages/RFPs.aspx) in accordance with ITB 7.1.
- 8.2 To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2.

C. Preparation of Bids

- 9. Cost of Bidding**
 - 9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid**
 - 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in English.

**11. Documents
Comprising the
Bid**

11.1 The Bid shall comprise the following:

- (a) Qualification
 - (i) Bid Submission Form
 - (ii) Declaration of Undertaking duly signed
 - (iii) Written confirmation authorizing the signatory of the Bid to commit the Bidder
 - (iv) Any other forms and supporting documents required
- (b) Technical and Financial Bid
 - (i) Bid Submission Form and the Bidding Forms
 - (ii) Completed schedules
 - (iii) Bid Security
 - (iv) Documentary evidence establishing the Bidder's qualifications to perform the contract if its Bid is accepted;
 - (v) Documentary evidence in establishing the Bidder's eligibility to bid;
 - (vi) Documentary evidence that the Goods and Related Services to be supplied by the Bidder are of eligible origin;
 - (vii) Documentary evidence, that the Goods and Related Services conform to the Bidding Documents;
 - (viii) Any other document **required in the BDS.**

11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish in the Bid Submission Form information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

- | | |
|--|--|
| <p>12. Declaration of Undertaking, Qualification Forms, and Bid Submission Form, Bidding Forms, Price Schedules</p> | <p>12.1 The Declaration of Undertaking and the Qualification Forms shall be prepared using the relevant forms furnished in Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.</p> <p>12.2 The Bid Submission Form, the Price Schedules, and the Bidding Forms shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.</p> |
| <p>13. Alternative Bids</p> | <p>13.1. Unless otherwise specified in the BDS, alternative bids shall not be considered.</p> |
| <p>14. Bid Prices and Discounts</p> | <p>14.1 The prices and discounts quoted by the Bidder in the Bid Submission Form and in the Price Schedules shall conform to the requirements specified below.</p> <p>14.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.</p> <p>14.3 The price to be quoted in the Bid Submission Form shall be the total price of the bid, excluding any discounts offered.</p> <p>14.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Bid Submission Form.</p> <p>14.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the BDS.. A bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.</p> <p>14.6 If so specified in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4 provided the bids for all lots (contracts) are opened at the same time.</p> <p>14.7 The term CIP (Carriage and Insurance Paid to), and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The</p> |

International Chamber of Commerce, as **specified in the BDS**.

- 14.8 Prices shall be quoted as specified in each Price Schedule included in bidding Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of bids by the Purchaser. In quoting prices, the Bidder shall be free to use transportation through carriers registered in any eligible country. The Bidder may obtain insurance services from any eligible country in accordance with Section V, Eligibility Criteria. Prices shall be entered in the following manner:

(a) For Goods manufactured in the Purchaser's Country

- (i) The price of the Goods quoted CIP named place of destination (final destinations), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
- (ii) All related services required in these Bidding Documents; and
- (iii) Any Purchaser's Country sales tax and other taxes which will be payable on the Goods if the contract is awarded to the Bidder.

(b) For Goods manufactured outside the Purchaser's Country, to be imported:

- (i) The price of the Goods quoted CIP named place of destination (port of entry and/or place of customs clearance), in the Purchaser's Country, **as specified in the BDS**; and
- (ii) All related services required in these Bidding Documents.

(c) For Goods manufactured outside the Purchaser's Country, already imported:

- (i) The price of the Goods quoted CIP named place of destination (final destinations), excluding the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported ;
- (ii) All related services required in these Bidding Documents; and
- (iii) All custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported in the Purchaser's country, payable on the Goods, if the Contract is awarded to the Bidder;

- (iv) Any Purchaser's Country sales and other taxes which will be payable on the Goods if the contract is awarded to the Bidder; and
 - (d) For Related Services specified in Section VII - Schedule of Requirements:
 - (i) All related services are to be included in the respective Price Schedule [(a), (b), or (c) above] submitted by each Bidder.
- 15. **Currencies of Bid and Payment**
 - 15.1 The currency(ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS**. The Bidder shall quote in the currency of the Purchaser's Country the portion of the bid price that corresponds to expenditures incurred in the currency of the Purchaser's country, unless otherwise **specified in the BDS**
- 16. **Documents Establishing the Eligibility and Conformity of the Goods and Related Services**
 - 16.1 To establish the eligibility of the Goods and Related Services, Bidders shall complete the country of origin declarations in the Price Schedule Forms
 - 16.2 To establish the conformity of the Goods and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
 - 16.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
 - 16.4 The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the BDS** following commencement of the use of the goods by the Purchaser.
 - 16.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

17. Documents Establishing the Eligibility and Qualifications of the Bidder

- 17.1 To establish Bidder's their eligibility in accordance with ITB 4, Bidders shall complete the Bid Submission Form, included in Section IV, Bidding Forms.
- 17.2 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:
- (a) That, if **required in the BDS**, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's Country;
 - (b) That, if **required in the BDS**, in case of a Bidder not doing business within the Purchaser's Country, the Bidder is represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
 - (c) That the Bidder meets each of the qualification criterion specified in Section III, Qualification and Evaluation and Criteria.

18. Period of Validity of Bids

- 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Purchaser in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for forty-two (42) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.
- 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:
- (a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the BDS**;
 - (b) In the case of adjustable price contracts, no adjustment shall be made;

- (c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.

19. Bid Security

- 19.1 The Bidder shall furnish as part of its bid, a Bid Security, as **specified in the BDS**, in original form and in the amount and currency **specified in the BDS**.
- 19.2 A Bid Security shall use the form included in Section IV, Bidding Forms, without deviations. The Bid Security must be issued in the currency of the Bid.
- 19.3 If a Bid Security is specified pursuant to ITB 19.1, the Bid Security shall be a demand guarantee in any of the following forms at the Bidder's option:
 - (a) An unconditional guarantee issued by a reputable bank or financial institution (such as an insurance, bonding or surety company);
 - (b) A cashier's or certified check issued by a bank; or
 - (c) Another security **specified in the BDS**;

From a reputable source from an eligible country as specified in Section V, Eligibility Criteria. Bidders are free to use any reputable bank for the purpose of issuing the required Bid Security, subject to all conditions of ITB 19 are being met without exception; the issuing bank shall have a correspondent bank in the Purchaser's country. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Purchaser prior to bid submission. The Bid Security shall be valid for forty-two (42) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

- 19.4 If a Bid Security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive Bid Security shall be rejected by the Purchaser as non-responsive.
- 19.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the contract and furnishing the Performance Security pursuant to ITB 42.
- 19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the contract and furnished the required performance security.
- 19.7 The Bid Security may be forfeited:
 - (a) If a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid

Submission Form, or any extension thereto provided by the Bidder; or

(b) If the successful Bidder fails to:

(i) Sign the Contract in accordance with ITB 41; or

(ii) Furnish a performance security in accordance with ITB 42.

19.8 The Bid Security of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

19.9 If a Bid Security is **not required in the BDS**, pursuant to ITB 19.1, and:

(a) If a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, or any extension thereto provided by the Bidder; or

(b) If the successful Bidder fails to: sign the Contract in accordance with ITB 41; or furnish a performance security in accordance with ITB 42;

the Purchaser may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Purchaser for a period of time **as stated in the BDS**.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11, clearly mark "ORIGINAL". Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them "COPY". In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.

20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. If the JV has not been legally constituted

into a legally enforceable JV at the time of bidding, then the Bid shall be signed by every member of the proposed JV.

- 20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

- 21.1 The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY". These envelopes containing the original and the copies shall then be enclosed in one single envelope/package.

In addition, an electronic version as true and complete color copy in one file in unalterable PDF format on CD or flash drive must be submitted.

- 21.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Bidder;
- (b) Be addressed to the Aga Khan University Hospital
- (c) Bear the specific identification of this bidding process
- (d) Bear a warning not to open before the time and date for opening of the qualification documents.

- 21.3 If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the qualification documents and/or bid.

22. Deadline for Submission of Bids

- 22.1 Bids must be received by the Purchaser at the address and no later than the date and time specified.
- 22.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

- 23.1. The Purchaser shall not consider any Bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any Bid received by the Purchaser after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and

- 24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include

Modification of Bids

a copy of the authorization (the power of attorney) in accordance with ITB 20.2. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) Prepared and submitted in accordance with ITB 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION"; and
- (b) Received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

25. Bid Opening

25.1 Except in cases specified in ITB 23 and ITB 24, the Purchaser shall publicly open and read out in accordance with ITB 25.2 all Bids received by the deadline (regardless of the number of Bids received), at the date, time and place **specified in the BDS**, in public and in the presence of Bidders' designated representatives.

25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening.

Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening.

Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening.

Only bids that are opened and read out at Bid opening shall be considered further.

25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Prices, per lot (contract) if

applicable, including any discounts and alternative bids (if permitted pursuant to ITB 13); the presence or absence of a Bid Security, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Purchaser shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1).

- 25.4 The Purchaser shall prepare a record of the opening session that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts, and alternative bids; and the presence or absence of a Bid Security, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

- | | |
|--|--|
| 26. Confidentiality | <p>26.1 Information relating to the examination, evaluation, and comparison of the bids, and qualification of the Bidders and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract Award is communicated to all Bidders in accordance with ITB 40.</p> <p>26.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, and comparison of the bids, and qualification of the bidders, or contract award decisions may result in the rejection of its Bid.</p> <p>26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it shall do so in writing.</p> |
| 27. Qualification of the Bidder | <p>27.1 The Purchaser shall determine to its satisfaction whether the Bidder meets the qualifying criteria specified in Section III, Qualification and Evaluation Criteria, Qualification.</p> <p>27.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.2 (c), Qualification.</p> <p>27.3 Only those criteria listed in Section III, Qualification and Evaluation Criteria, 1. Qualification, shall be used during this evaluation step.</p> <p>27.4 An affirmative determination shall be a prerequisite for successful qualification of the Bidder, and continued evaluation of the Bidder's Bid. A negative determination shall result in disqualification of the bid.</p> |
| 28. Clarification of Bids | <p>28.1 To assist in the examination, evaluation, comparison of the qualification and technical and financial bids of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the Evaluation of the bids, in accordance with ITB 32.</p> <p>28.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Purchaser's request for clarification, its Bid may be rejected.</p> |

- 29. Deviations, Reservations, and Omissions**
- 29.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.
- 30. Determination of Responsiveness**
- 30.1 The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 30.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) If accepted, would:
 - (i) Affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
 - (ii) Limit in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
 - (b) If rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.
- 30.3 The Purchaser shall examine the technical aspects of the bid submitted in accordance with ITB 16, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.
- 30.4 If a bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 31. Non-conformities, Errors and Omissions**
- 31.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonmaterial nonconformities in the Bid.
- 31.2 Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation

requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

- 31.3 Provided that a bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be **adjusted as specified in the BDS**, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.
- 32. Correction of Arithmetical Errors**
- 32.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
- (a) If there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
 - (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
 - (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 32.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 32.1 shall result in the rejection of the Bid.
- 33. Conversion to Single Currency**
- 33.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted in a single currency as **specified in the BDS**.
- 34. Margin of Preference**
- 34.1 **Unless otherwise specified in the BDS**, a margin of preference shall not apply.
- 35. Evaluation of Bids**
- 35.1 The Purchaser shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 35.2 To evaluate a Bid (evaluation will be done for Lots (contracts)), the Purchaser shall consider the following:
- (a) The Bid Price as quoted in accordance with clause 14;

- (b) Price adjustment for correction of arithmetic errors in accordance with ITB 32.1;
 - (c) Price adjustment due to discounts offered in accordance with ITB 14.4;
 - (d) Price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;
 - (e) Converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 33;
 - (f) The additional evaluation factors as specified in Section III, Qualification and Evaluation Criteria, 2. Evaluation.
- 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 35.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Bid Submission Form, is specified in Section III, Qualification and Evaluation Criteria.
- 35.5 The Purchaser's evaluation of a bid will exclude and not take into account:
- (a) In the case of Goods manufactured in the Purchaser's Country, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Bidder;
 - (b) In the case of Goods manufactured outside the Purchaser's Country, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Bidder;
 - (c) In the case of Related Services, customs duties and sales and other similar taxes that will be payable on the Related Services if the contract is awarded to the Bidder;
 - (d) Any allowance for price adjustment during the period of execution of the contract, if provided in the bid.
- 35.6 The Purchaser's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise **specified in Section III**,

Qualification and Evaluation Criteria. The criteria and methodologies to be used shall be as specified in Section III, Qualification and Evaluation Criteria.

- 35.7 If the bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Purchaser's estimate, the Purchaser shall require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the supply requirements and the method and schedule proposed. If one or several inconsistencies are evidenced, or if a bidder does not provide the required detailed price analyses, the bid shall be declared non-compliant and rejected.
- 36. Comparison of Bids** 36.1 The Purchaser shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 35.2 to determine the lowest evaluated bid.
- 37. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids** 37.1 The Purchaser reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract Award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

F. Award of Contract

- 38. Award Criteria** 38.1 Subject to ITB 37.1, the Purchaser shall award the Contract to the qualified, pursuant to ITB 27, Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents.
- 39. Purchaser's Right to Vary Quantities at Time of Award** 39.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VII, Schedule of Requirements, provided this does not exceed the percentages **specified in the BDS**, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.
- 40. Notification of Award** 40.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted; for this purpose, the Letter of Acceptance Form attached to these Bidding Documents shall be used. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Purchaser will pay the Supplier in consideration of the supply of Goods (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding.

- 40.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 40.3 The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.
- 41. Signing of Contract**
- 41.1 Promptly after notification, the Purchaser shall send the successful Bidder the Contract Agreement.
- 41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.
- 41.3 Notwithstanding ITB 41.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Bidder shall not be bound by its bid, always provided however, that the Bidder can demonstrate to the satisfaction of the Purchaser and of the KfW that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract.
- 42. Performance Security**
- 42.1 Within twenty-eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security² in accordance with the GC, using for that purpose the Performance Security Form included in Section X, Contract Forms. Bidders are free to use any reputable bank acceptable to the Purchaser for the purpose of issuing the required performance security, subject to all conditions of ITB 42 and GC are being met without exception the issuing bank shall have a correspondent bank in the Purchaser's country.
- 42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder, whose bid is qualified, pursuant to ITB 27, and substantially responsive.

² Bonds shall only be permitted with prior approval from KfW.

Section II. Bid Data Sheet (BDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

ITB Clause Reference	A. General							
ITB 1.1	<p>The number of the Invitation for Bids is: Procurement no. 507109</p> <p>Below is the vendor list</p> <table><tr><th>Supplier</th></tr><tr><td>Atlas Copco Eastern Africa Ltd (Kenya)</td></tr><tr><td>Shemay MedTech Ltd (Kenya)</td></tr><tr><td>NEL Nairobi Enterprises Ltd (Kenya)</td></tr><tr><td>BOC Ltd (Kenya)</td></tr><tr><td>Pulse Healthcare (Kenya)</td></tr><tr><td>Novair Oxyplus (France)</td></tr></table>	Supplier	Atlas Copco Eastern Africa Ltd (Kenya)	Shemay MedTech Ltd (Kenya)	NEL Nairobi Enterprises Ltd (Kenya)	BOC Ltd (Kenya)	Pulse Healthcare (Kenya)	Novair Oxyplus (France)
Supplier								
Atlas Copco Eastern Africa Ltd (Kenya)								
Shemay MedTech Ltd (Kenya)								
NEL Nairobi Enterprises Ltd (Kenya)								
BOC Ltd (Kenya)								
Pulse Healthcare (Kenya)								
Novair Oxyplus (France)								
ITB 1.1	The Purchaser is: <i>Aga Khan University Hospital Nairobi</i>							
ITB 1.1	<p>The name and identification number of the LCB are: Supply, installation and maintenance of medical oxygen plant for Aga Khan University Hospital, Nairobi, Kenya - Procurement no. 507109</p> <p>This LCB procedure concerns one single lot.</p>							
ITB 2.1	<p>The name of the Project is: Support to Health Facilities in collaboration with the Aga Khan University (COVID 19 response program AKU)</p> <p>BMZ no. 2020 36 788</p>							
	B. Contents of Bidding Documents							
ITB 7.1	<p>For <u>clarification of bid purposes</u> please write to:</p> <p>Attention: <i>Anju Agarwal</i></p> <p>Address: <i>3rd parklands Aga Khan University Hospital</i></p> <p>City: <i>Nairobi</i></p> <p>ZIP Code: <i>00100</i></p> <p>Country: <i>Kenya</i></p> <p>Electronic mail address: anju.agarwal@aku.edu</p> <p>pieter.riemersma@gopa-infra.de</p>							

ITB 7.1	Web page: https://hospitals.aku.edu/nairobi/AboutUs/Pages/RFPs.aspx
	C. Preparation of Bids
ITB 10.1	The language of the bid is: English. All correspondence exchange shall be in the English language. Language for translation of supporting documents and printed literature is English.
ITB 11.1 (k)	The Bidder shall submit the following additional documents in its bid: <i>[power of attorney]</i>
ITB 13.1	Alternative Bids <i>shall not be</i> considered.
ITB 14.5	The prices quoted by the Bidder <i>shall not</i> be adjustable.
ITB 14.7	The Incoterms edition is Incoterms 2010.
ITB 14.8 (b) (i)	Named Place of Destination: DAP (Delivered at specified place, uncleared for customs <i>Aga Khan University Hospital 3rd parklands Nairobi</i>
ITB 15.1	The prices shall be quoted by the bidder in: <i>EUR, USD or KSH</i> The official source of the selling (exchange) rate is https://www.centralbank.go.ke/rates/forex-exchange-rates/
ITB 16.4	Period of time the Goods are expected to be functioning (for the purpose of spare parts): <i>7 Years</i> from the date of installation
ITB 17.2 (a)	Manufacturer's authorization is: required for items with a unit price of more than € 10.000.
ITB 17.2 (b)	After sales service is: <i>required for 2 years</i>
ITB 18.1	The bid validity period shall be <i>120 days</i>
ITB 18.3 (a)	The bid price shall be adjusted by the following factor: <i>not applicable</i>
ITB 19.1	A Bid Security <i>is</i> required. If a Bid Security shall be required, the percentage and currency of the Bid Security shall be: at least 2% of the bid price
ITB 19.3 (c)	Other types of acceptable securities: none .
ITB 19.9	Not applicable

ITB 20.1	In addition to the original of the bid, the number of copies is: three.(3), of which one copy must be submitted to GOPA Infra GmbH and the other two copies to the Purchaser as per BDS ITB 22.1 below The Bidder shall submit the original bid and two copies, including an electronic version in one outer envelope as per ITB 21.1. :
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of power of the attorney
	D. Submission and Opening of Bids
ITB 22.1	<p>For bid submission purposes, the Purchaser's address is: Attention: <i>Anju Agarwal</i> Address: <i>3rd Parklands Nairobi</i> Floor-Purchasing and Supply Chain Department City: <i>Nairobi</i> ZIP Code: <i>00100</i> Country: <i>Kenya</i></p> <p>The deadline for the submission of bids is: Date: 11th August 2021 Time: 4:00pm East Africa Time</p> <p>One copy, including an electronic version as per ITB 21.1 shall be submitted up to the deadline to: Att. Pieter Riemersma Address: GOPA Infra GmbH, Hindenburgring 18, 61348 Bad Homburg, Germany tel. +49-6172-68170</p>
ITB 25.2	<p>The bid opening shall take place at: Street Address: <i>Aga Khan university Hospital Nairobi. 3rd Parklands</i> Floor/ Room number: <i>Lecture theatre</i> City: <i>Nairobi</i> Country: <i>Kenya</i></p> <p>No minimum number of bids is required in order to proceed to bid opening.</p>
ITB 25.2	<p>The public bid opening session shall take place on: Date: 12th August 2021 Time: 3:00pm to 5:00pm EAT</p>
	E. Evaluation and Comparison of Bids
ITB 31.1	<p>The provisions in ITB 31.1 do not apply to items classified as major items in Section VII.</p> <p>For items other than major items, for which no bid price is provided in the respective price schedule(s), the bid price of the most expensive qualified and substantially responsive bidder for such items shall be used in the comparison of otherwise qualified and substantially</p>

	responsive bids. In the absence of another bidder pricing these items, the Project Consultant may estimate the market value of such items if delivered to the Purchaser's country. This correction procedure is limited to a max. of five (5) per cent of the total bid price in any given lot.
ITB 33.1	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in different currencies into a single currency is: <i>[Insert the name of the currency, generally the local currency]</i></p> <p>The source of exchange rate shall be: the selling (exchange) rate under https://www.centralbank.go.ke/rates/forex-exchange-rates/</p> <p>The date for the exchange rate shall be 11th August 2021</p>
ITB 34.1	A margin of domestic preference <i>shall not</i> apply.
	F. Award of Contract
ITB 39.1	<p>The maximum percentage by which quantities may be increased is: 20%;</p> <p>The maximum percentage by which quantities may be decreased is: 20%.</p>

Section III. Qualification and Evaluation Criteria

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1. Qualification

All qualification documents listed here (including attached forms, and required support documents) shall be submitted, and will be evaluated first; only bids passing the qualification shall be evaluated further.

1.1 The Qualification Document submission shall consist of:

(1) Bid Submission Form, Declaration of Undertaking, and Eligibility

Bidder shall meet the requirements and submit the required forms and supporting documents; forms provided in this bidding document may not be amended but only completed following the instructions in this bidding document.

Bidders to submit power of attorney as well

(2) Spare Parts and Local Agent (if applicable) (Table 2)

Submission of the required information, in response the requirements stated in Section VII, Schedule of Requirements. These requirements shall only be included if applicable

1.2. Requirements and Criteria

The following tables describe qualification requirements and criteria, in accordance with ITB 27 and Section III (Qualification), which must be satisfied by each Bidder.

Table 1							
Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
1. Bid Submission Form, Declaration of Undertaking, and Eligibility							
1.1	Bid Submission Form	Submission, in accordance with Section III, Qualification	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
1.2	Declaration of Undertaking	Submission, in accordance with ITB 12	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Declaration of Undertaking
1.3	Power of Attorney	Submission, in accordance with ITB 20.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Power of Attorney (free format)
1.4	Joint Venture Agreement	JV Agreement or Letter of Intent, (in case of a JV), in accordance with ITB 4.1	N/A	Must meet requirement	Must meet requirement	N/A	Relevant pages of an existing JV Agreement or Letter of Intent (free format)
1.5	Nationality	Nationality in accordance with ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and ELI - 1.2 (in case of JV), with attachments
1.6	Conflict of Interest	No conflicts of interest in accordance with ITB 4.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
1.7	KfW Eligibility	Not being ineligible for KfW financing, as described in ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
1.8	State-owned Entity	Meets conditions of ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and ELI - 1.2 (in case of JV), with attachments

Table 2							
Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
5. Technical Capacity, Spare Parts and Local Agent (if applicable)							
5.1	Spare Parts	If so required in BDS ITB 17.2(b) or Section VII, Schedule of Requirements, the Bidder’s must confirm availability of spare parts.	Must meet requirement	Must meet requirement	N/A	N/A	Form SPA - 5.1, and any support documents as required in Section VII, Schedule of Requirements
5.2	Local Agent	If so required in BDS ITB 17.2(b) or Section VII, Schedule of Requirements, the Bidder, if not doing business in Kenya, must have a local agent including qualified personnel for the purpose of after sales services.	Must meet requirement	Must meet requirement	N/A	N/A	Support documents as required in Section VII, Schedule of Requirements

2. Evaluation (ITB 35)

2.1 Evaluation Criteria (ITB 35.6)

Not applicable

2.2. Multiple Contracts (ITB 35.4)

Not applicable

3. Domestic Preference (ITB 34)

Not applicable

Section IV. Bidding Forms

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Declaration of Undertaking

Reference name of the Application/Offer/Contract: ("Contract")¹

To: ("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")² subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
 - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
 - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
 - 2.4) having been subject, within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
 - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
 - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or*

¹ Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

² The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction); or

2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.

3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:

3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;

3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;

3.5) in the case of procurement of Works, Plant or Goods:

- i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
- ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.

6. In the context of the Tender Process and performance of the corresponding Contract:

6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;

6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor

operate in any sectors under an embargo of the United Nations, the European Union or Germany; and

6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation³ (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an auditor appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of⁴: _____

Signature:

Dated:

³ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

⁴ In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

Form ELI - 1.1: Bidder Information Form

[The Bidder shall in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]

Date: *[Insert]*

Page *[Insert]* of *Insert* pages

Bidder's name: <i>[Insert Bidder's legal name]</i>
In case of Joint Venture (JV), legal name of each member: <i>[Insert legal name of each member in JV]</i>
Bidder's actual or intended country of registration: <i>[Insert actual or intended country of registration]</i>
Bidder's year of registration: <i>[Insert Bidder's year of registration]</i>
Bidder's address in country of registration: <i>[Insert Bidder's legal address in country of registration]</i>
Bidder's Authorized Representative Information Name: <i>[Insert Authorized Representative's name]</i> Address: <i>[Insert Authorized Representative's address]</i> Telephone/Fax numbers: <i>[Insert Authorized Representative's telephone/fax numbers]</i> E-mail address: <i>[Insert Authorized Representative's email address]</i>
1. Attached are copies of original documents of <i>[Check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association) and/or documents of registration of the legal entity named above, in accordance with ITB 4.5; <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1; <input type="checkbox"/> In case of a state-owned enterprise or institution, in accordance with ITB 4.3 documents establishing: a) Legal and financial autonomy; b) Operation under commercial law; c) Establishing that the Bidder is not dependent agency of the Purchaser. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

Form ELI - 1.2: Bidder's JV Information Form

[The Bidder shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Bidder and for each member of a Joint Venture. No alterations to its format shall be permitted and no substitutions shall be accepted.]

Date: *[Insert]*

Page *[Insert]* of *Insert* pages

Bidder's name: <i>[Insert Bidder's legal name]</i>
Bidder's JV Member's name: <i>[Insert JV's Member legal name]</i>
Bidder's JV Member's country of registration: <i>[Insert JV's Member country of registration]</i>
Bidder's JV Member's year of registration: <i>[Insert JV Member's year of registration]</i>
Bidder's JV Member's legal address in country of registration: <i>[Insert JV's Member legal address in country of registration]</i>
Bidder's JV Member's Authorized Representative Information Name: <i>[Insert name of JV's Member Authorized Representative]</i> Address: <i>[Insert address of JV's Member Authorized Representative's]</i> Telephone/Fax numbers: <i>[Insert telephone/fax numbers of JV's Member Authorized Representative]</i> E-mail address: <i>[Insert email address of JV's Member Authorized Representative]</i>
1. Attached are copies of original documents of <i>[Check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association) of the legal and/or documents of registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.5; <input type="checkbox"/> In case of a state-owned enterprise or institution, in accordance with ITB 4.3 documents establishing: a) Legal and financial autonomy; b) Operation under commercial law; c) Establishing that the Bidder is not dependent agency of the Purchaser. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

Form SPA - 5.1: Spare Parts

[To be completed by the Bidder and by at least one member of the Bidder's JV]

Bidder's Legal Name: *[Insert]*

Date: *[Insert]*

JV Member's Legal Name: *[Insert]*

Page *[Insert]* of *[Insert]* pages

We confirm that, if awarded the Contract, spare parts will be available on short notice, through us / our local agent / the manufacturer-appointed official representative *[Select as appropriate]*.

We further confirm that, if awarded the Contract, we (i) will carry sufficient inventories to assure ex-stock supply of consumables and consumable spares, and other spare parts and components will be supplied as promptly as possible but in any case within *[Insert number of days – same as used in the PC attached at the end of this Bidding Document]* days of placement of order; (ii) will be for a period of *[Insert number of years – same as used in the PC attached at the end of this Bidding Document]* years from the date of delivery and commissioning under obligation to supply spare parts, and will, in the event of termination of production of the spare parts, send an advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

Bid Submission Form

[The Bidder shall prepare his Bid Submission Form on a Letterhead paper specifying the Bidder's complete name, address and communication details].

[Note: All italicized text is for use in preparing these forms by bidders and shall be deleted from the final document.]

Date: *[Insert date]*

To: *[Insert complete name of Purchaser]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda *[Insert Addenda No./Nos., if any]* issued in accordance with Instructions to Bidders (ITB 8);
- (b) We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) We have not been suspended nor declared ineligible by the Purchaser based on execution of a Bid Securing Declaration in the Purchaser's country in accordance with ITB 4.4;
- (d) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedule(s) specified in the Schedule of Requirements the following Goods: *[Insert a brief description of the Goods and Related Services]*;
- (e) The total price of our Bid, excluding any discounts offered in item (f) below is:
 - i) In case of only one lot, total price of the Bid is: *[Insert total price and currency in words and figures]* *[Delete if multiple lots are offered]*
 - ii) In case of multiple lots, total price of each lot is: *[Insert a list/table showing the total price and currency in words and figures for each lot offered]* *[Delete if only one lot is offered]*
 - iii) In case of multiple lots, total price of all lots (sum of all lots) is: *[Insert the total price and currency in words and figures for all lots offered]* *[Delete if only one lot is offered]*
- (f) The discounts offered and the methodology for their application are:
 - i) The discounts offered are: *[Specify in detail each discount offered; if no discount is offered state "None"]*
 - ii) The exact method of calculations to determine the net price after application of discounts is: *[Specify in detail the method that shall be used to apply the offered discounts; if no discount is offered state "None"]*
- (g) Our bid shall be valid for a period of *[Insert the number of calendar days]* days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- (h) If our bid is accepted, we commit to obtain and submit a performance security in accordance with ITB 42 of the Bidding Documents;
- (i) We are not participating, as a Bidder, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
- (j) We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by an entity or individual that is subject to, a temporary suspension or a debarment imposed by a member of the World Bank Group or a debarment imposed by the KfW, the World Bank in accordance with the Agreement of Mutual Enforcement of Debarment Decisions between the World Bank and other development banks, or any other similar funding agency;
- (k) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: *[Insert complete name of each recipient, its full address, the reason for which each commission, gratuity or fee was or will be paid and the amount and currency of each such commission, gratuity or fee]*

Name of Recipient	Address	Reason	Amount

[If none has been paid or is to be paid, insert "none"].

- (l) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (m) We understand and accept that (i) the Purchaser is not bound to accept the lowest evaluated bid or any other bid that the Purchaser may receive, and (ii) the Purchaser reserves the right to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders; and
- (n) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder *[Insert the complete name of the bidder; in the case of a Bid submitted by a Joint Venture insert the name of the Joint Venture as Bidder]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder *[Insert complete name of the person duly authorized to sign the Bid; the person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid Schedules]*

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

Price Schedule Forms

*[The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Purchaser in the Schedule of Requirements; separate **Price Schedules** must be submitted for each lot offered].*

Price Schedule: Goods Manufactured Outside the Purchaser's Country, to be Imported

(Group C bids, goods to be imported) ¹ Currencies in accordance with ITB Sub-Clause 15						Date: <i>[Insert]</i>	
						Lot No.: <i>[Insert, if applicable]</i>	
						Page <i>[Insert]</i> of <i>[Insert]</i>	
1	2	3	4	5	6	7	8
Line Item No.	Description of Goods	Country of Origin	Delivery Time in Days at named place of DAP <i>[Insert destination (port-of-entry)]</i>	Quantity and Physical Unit	Unit Price & Currency DAP <i>[Insert named place of destination]</i> in accordance with ITB 14.8(b)(i)	Unit Price & Currency Related Services (handling, inland transportation to final destination(s), commissioning, and where applicable installation and training in accordance with ITB 14.8(b)(ii))	Total Price & Currency per Line item (Col. (6+7)x5)
<i>[Insert number of the item]</i>	<i>[Insert name of Goods]</i>	<i>[Insert country of origin of the Goods]</i>	<i>[Insert quoted Delivery Time in days]</i>	<i>[Insert number of units to be supplied and name of the physical unit]</i>	<i>[Insert currency & unit price CIP per unit]</i>	<i>[Insert currency & unit price for all required local services]</i>	<i>[Insert currency & total price of the line item]</i>
	2 year preventive and corrective maintenance for complete oxygen generation system						
Total Price (including currency) DAP plus local services (if any) <i>[Insert name of Purchaser's Country]</i>							

Name of Bidder *[Insert complete name of Bidder]* Signature of Bidder *[Signature of person(s) signing the Bid]* Date *[Insert Date]*

¹ Delete if domestic preference is not applicable.

Price Schedule: Goods Manufactured Outside the Purchaser's Country, Already Imported

(Group C bids, goods already imported) ¹ Currencies in accordance with ITB Sub-Clause 15								Date: <i>[Insert]</i>	
								Lot No.: <i>[Insert, if applicable]</i>	
								Page <i>[Insert]</i> of <i>[Insert]</i>	
1	2	3	4	5	6	7	8	9	10
Line Item No.	Description of Goods	Country of Origin	Delivery Time in Days at named place of DAP destination <i>[Insert final destination(s) in the Purchaser's country]</i>	Quantity and Physical unit	DAP Unit Price & Currency excluding Custom Duties and Import Taxes paid, in accordance with ITB 14.8(c)(i)	Unit Price & Currency Related Services (handling, commissioning, and where applicable installation and training in accordance with ITB 14.8(c)(ii))	Custom Duties and Import Taxes paid & Currency per unit in accordance with ITB 14.8(c)(iii), [to be supported by documents]	Sales and other taxes paid or payable & Currency per item if Contract is awarded, in accordance with ITB 14.8(c)(iv)	Currency & Total Price per line item (Col. (6+7)x5)
<i>[Insert number of the item]</i>	<i>[Insert name of Goods]</i>	<i>[Insert country of origin of the Goods]</i>	<i>[Insert quoted Delivery Time in days]</i>	<i>[Insert number of units to be supplied and name of the physical unit]</i>	<i>[Insert unit price per unit]</i>	<i>[Insert currency & unit price for all required local services]</i>	<i>[Insert custom duties and taxes paid & currency per unit]</i>	<i>[Insert sales and other taxes payable & currency per item if Contract is awarded]</i>	<i>[Insert currency & total price per line item]</i>
	2 year preventive and corrective maintenance for complete oxygen generation system								
Total Price (including currency) DAP plus local services (if any) <i>[Insert name of Purchaser's Country]</i>									

¹ Delete if domestic preference is not applicable.

Name of Bidder *[Insert complete name of Bidder]* Signature of Bidder *[Signature of person(s) signing the Bid]* Date *[Insert Date]*

Price Schedule: Goods Manufactured in the Purchaser's Country

(Group A and B bids) ²							Date: <i>[Insert]</i>	
Currencies in accordance with ITB Sub-Clause 15							Lot No.: <i>[Insert, if applicable]</i>	
							Page <i>[Insert]</i> of <i>[Insert]</i>	
1	2	3	4	5	6	7 ³	8	9
Line Item No.	Description of Goods	Delivery Time in Days at named place of destination	Quantity and Physical unit	Unit Price & Currency DAP	Unit Price & Currency Related Services (handling, commissioning, and where applicable installation and training in accordance with ITB 14.8(a)(ii))	Cost of local labor, raw materials, transportation, insurance and components with origin in the Purchaser's Country % of Col. 5	Sales and other taxes payable per line item if Contract is awarded, in accordance with ITB 14.8(a)(iii)	Total Price & Currency per line item (Col. (5+6) x 4)
<i>[Insert number of the item]</i>	<i>[Insert name of Goods]</i>	<i>[Insert quoted Delivery Time in days]</i>	<i>[Insert number of units to be supplied and name of the physical unit]</i>	<i>[Insert DAP unit price & currency]</i>	<i>[Insert currency & unit price for all required local services]</i>	<i>[Insert cost of local labor, raw material, transportation, insurance and components from within the Purchase's country as a % of the CIP price per line item]</i>	<i>[Insert sales and other taxes payable per line item if Contract is awarded]</i>	<i>[Insert total price & currency per item]</i>
	2 year preventive and corrective maintenance for complete oxygen generation system							
Total Price (including currency) DAP plus local services (if any) <i>[Insert name of Purchaser's Country]</i>								

² Delete if domestic preference is not applicable.

³ This column is not required if domestic preference is not applicable.

Name of Bidder *[Insert complete name of Bidder]* Signature of Bidder *[Signature of person(s) signing the Bid]* Date *[Insert Date]*

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

Bid Security

Beneficiary: Aga Khan University Hospital, 3rd Parklands, 00100 Nairobi, Kenya

Date: *[Insert date of issue]*

BID GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of the bidder, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the supply, installation and maintenance of medical oxygen plant for Aga Khan University Hospital, Nairobi, Kenya supply and installation of medical oxygen plant under Limited Competitive Bidding, Procurement no. 507109

Waiving all objections and defenses, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) Has withdrawn its Bid during the period of bid validity set forth in the Applicant's Bid Submission Form (the Bid Validity Period"); or
- (b) Having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee shall expire not later than *[Insert expiry date]*¹.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert²: This guarantee is subject to the Uniform Rule for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.]

Place, date

Guarantor's authorized signature(s)

¹ Pursuant to ITB Clause 19.3 the guarantee must be valid for at least 42 days beyond the bid validity.

² In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Manufacturer's Authorization

Date: *[Insert date]*

LCB Procurement no. 507109

To: *[Insert complete name of Purchaser]*

WHEREAS

We *[Insert complete name of Manufacturer]*, who are official manufacturers of *[Insert type of goods manufactured]*, having factories at *[Insert full address of Manufacturer's factories]*, do hereby authorize *[Insert complete name of Bidder]* to submit a bid the purpose of which is to provide the following Goods, manufactured by us:

[Insert name and or brief description of the Goods],

and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed: *[Insert signature(s) of authorized representative(s) of the Manufacturer]*

Name: *[Insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title: *[Insert title]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

Section V. Eligibility Criteria

Eligibility in KfW-Financed Procurement

1. Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.
2. Applicants/Bidders (including all members of a Joint Venture and proposed or engaged Subcontractors) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer or on the intended date of Award of a Contract, they:
 - 2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
 - 2.2 have been
 - (a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or the German Government for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - (b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practice during any Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application/Offer which shows that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction;
 - 2.3 have been subject within the past five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless this termination was challenged and the dispute resolution is still pending or has not confirmed a full settlement against them;
 - 2.4 have not fulfilled applicable fiscal obligations regarding payments of taxes either in the country where they are constituted or the PEA's country;
 - 2.5 are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individual available on the World Bank's website or any other multilateral development bank unless they provide supporting information together with their Declaration of Undertaking which shows that this exclusion is not relevant in the context of this Contract or
 - 2.6 have given misrepresentation in documentation requested by the PEA as part of the Tender Process of the relevant Contract.

- 3 State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW's satisfaction, through all relevant documents, including its charter and other information KfW may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt

Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

1) Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

- Fraudulent Practice** Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
- Obstructive Practice** Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
- Sanctionable Practice** Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

2) Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation¹ (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence

¹ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

PART 2 – Supply Requirements

Section VII. Schedule of Requirements

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1. List of Goods and Delivery Schedule

Line Item No. or Lot No.	Description of Goods	Quantity ¹	Physical Unit ¹	Named Place of Destination as specified in BDS	Delivery (as per Incoterms) Date		
					Earliest Delivery Date ² at named place of destination	Latest Delivery Date at named place of destination	Bidder's offered Delivery date at named place of destination [to be provided by the bidder]
<i>[Insert item or lot no]</i>	<i>[Insert description of Goods]</i>	<i>[Insert quantity of item to be supplied]</i>	<i>[Insert physical unit for the quantity]</i>	<i>[Insert named place of destination, typically the point-of-entry / place of customs clearance]</i>	<i>[Insert the number of days following the date of signature of the Contract]</i>	<i>[Insert the number of days following the date of signature of the Contract]</i>	<i>[Insert the number of days following the date of signature of the Contract]</i>
A 1	Compressors/Air feed system	2	Nos	Aga Khan University Hospital	One month	Five months	
A 2	Dryer system	2	Nos	Aga Khan University Hospital	One month	Five months	

¹ Only required to be filled in case of line items being listed; not required for lots.

² Earliest delivery date is used in cases where the Purchaser cannot accept delivery before a specific date, e.g. if construction work is still under way; if there is no earliest delivery date required, leave this column blank.

A 3	Compressed air filters: - Dry dust, microorganism fine filter - Oil aerosol /wet dust filter - Carbon tower oil vapors filter	2	Set	Aga Khan University Hospital	One month	Five months	
A 4	Air receiver tank	2	Nos	Aga Khan University Hospital	One month	Five months	
A 5	Oxygen Generator	2	Nos	Aga Khan University Hospital	One month	Five months	
A 6	Oxygen buffer tank	2	Nos	Aga Khan University Hospital	One month	Five months	
A 7	Automatic change over from Duty to Stand by plant	1	Lot	Aga Khan University Hospital	One month	Five months	
A 8	Monitoring system	1	Lot	Aga Khan University Hospital	One month	Five months	
A 9	Booster system for filling of oxygen cylinders	1	Lot	Aga Khan University Hospital	One month	Five months	
A 10	Ramp assembly for 10 cylinders	1	Lot	Aga Khan University Hospital	One month	Five months	
A 11	Emergency Manifold O2 (Oxygen) - 2x10 comprised of Oxygen Manifold Header Rack 2x4 O2 Bullnose (BS 341 No. 3) Top Entry Tailpipe	1	Lot	Aga Khan University Hospital	One month	Five months	

B 1+2	Other items / accessories required for installation within building	1	Lot	Aga Khan University Hospital	One month	Five months	
B3	Medical grade type K dia. 35mm copper pipe including fittings & brackets	30	Meters	Aga Khan University Hospital	One month	Five months	
B3	Medical grade type K dia. 28 mm copper pipe including fittings & brackets	75	Meters	Aga Khan University Hospital	One month	Five months	
B3	Line isolation valves - 28mm	4	Nos	Aga Khan University Hospital	One month	Five months	
B 4	Portable oxygen purity analyser	1	Nos	Aga Khan University Hospital	One month	Five months	
B 5	Oxygen consumption recorder	1	Nos	Aga Khan University Hospital	One month	Five months	

2. List of Related Services and Completion Schedule

[This table shall be filled in by the Purchaser. The Required Completion Dates should be realistic, and consistent with the required Goods Delivery Dates]

Service No.	Description of Service	Quantity ¹	Physical Unit ¹	Place where Services shall be Performed	Final Completion Date(s) of Services
<i>[Insert Service No]</i>	<i>[Insert description of Related Services]</i>	<i>[Insert quantity of items to be supplied]</i>	<i>[Insert physical unit for the items]</i>	<i>[Insert name(s) of the Place]</i>	<i>[Insert required Completion Date(s)]</i>
	<i>Design as per Technical Specifications: lay-out drawing for the installation of all equipment, along with details required for fitting / connecting within the building</i>	1	Lot		15 days from signing of contract
	<i>[Installation as per Technical Specifications]²</i>	1	Lot	On site at Aga Khan University Hospital	Within one month from delivery of equipment and readiness of housing building at Aga Khan University
	<i>[Commissioning]</i>	1	Lot	On site at Aga Khan University Hospital	On completion of installation
	<i>[Training as per Technical Specifications]²</i>	1	Lot	On site at Aga Khan University Hospital	On completion of installation
	<i>[Servicing and maintenance as per Technical Specifications]²</i>	2	Years	On site at Aga Khan University Hospital	During 2 years after acceptance

¹ Only use if quantity/physical unit can be clearly attributed.

	<i>[List of spare parts]²</i>	1	Lot		Updated on completion of installation
	<i>[List of consumables]²</i>	1	Lot		Updated on completion of installation

3. Technical Specifications

Bidder shall note that specifications, standards for workmanship, material and equipment, and open or hidden references to brand names or catalogue numbers, designated by the Purchaser in the Specifications, are intended to be descriptive only and not restrictive. The bidder may substitute other specifications, authoritative standards, brand names and/or catalogue numbers in its Bid, provided that it demonstrates to the Purchaser's satisfaction that the substitutions are equivalent or superior to those designated in the Specifications.

All Goods offered by Bidders and supplied by the successful Bidders must be new and unused, be of the most recent or current models, and must incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

Bidders must attach supporting documents as appropriate and fill out columns 3 and 4 in the form below.

TECHNICAL SPECIFICATION FORM (TSF)			
1	2	3	4
No.	ITEM NAME & DESCRIPTION	BIDDER'S OFFER	Ref. page no of Supporting Documents
	Item description: Oxygen Generator System with dual independent oxygen production lines with an oxygen generation capacity of 700-750 l/min per production line in accordance with ISO7396-1 (Beacon Medaes Oxyplant 45 or equivalent)		
		<i>(the data below may be stated for each component as judged appropriate by the bidder)</i>	
		Manufacturer:	
		Brand:	
		Type/Model:	
		Catalogue reference:	
		Country of Origin:	
	APPLICATION		
	<i>The system is intended to produce constant purity medical oxygen for hospital supply and filling of oxygen cylinders at the Aga Khan University Hospital,</i>		

	<i>Nairobi, in a building to be constructed separately for the equipment and provided with 3 phase 400 V 50 Hz electricity supply.</i>		
A	DESCRIPTION OF BASIC COMPONENTS WITH TECHNICAL SPECIFICATIONS		
1	Air compressor /Air feed system (Beacon Medaes GA45+P A 7,5 APB or equivalent)		
	Unit capable of continuously supplying compressed air to the system.		
	Power: suitable for oxygen production as required		
	Nominal outlet pressure: 7.5 bar		
	Automatic pressure switch		
	Control panel for monitoring continuously and accurately pressure		
2	Air dryer system (Beacon Medaes FX 18 (E16) or equivalent)		
	Type: Refrigerated		
	Flow: at least equal to the air compressor		
	Max. operating pressure: at least 7.5 bar		
	Condensate drain system		
	Able to achieve 3°C PDP at 45°C		
3	Compressed air filters:		
	Dry dust, microorganism fine filter		
	Oil aerosol /wet dust filter		
	Carbon tower oil vapors filter		
4	Air receiver tank		
	Steel		
	Capacity: 1500-2000 litre		
	Max. operating pressure: at least 11 bar		
	Pressure safety valve		
	Tank compliant with European Pressure Equipment Directive (PED) 2014/68/EU or equivalent		
5	Oxygen generator (Beacon Medaes OGP 45 NED or equivalent)		
	PSA technology		

	Oxygen flow: 700-750 l/min		
	Purity: 93 % (+/- 3 %)		
	Inlet pressure: at least 7 bar with inlet pressure regulator for working pressure of app. 6.5 bar for oxygen generator		
	Outlet pressure covering range from 4 – 5 bar		
	Oxygen sensor for continuous measurement of oxygen purity		
	Control system for continuous read out and recording inlet dew point, outlet pressure, oxygen purity and flow rate with BMS connections to indicate normal operation, a general fault condition, low purity alarm and shutdown.		
	Alarms: System for measurement of purity accuracy with shut off valve to cut production in case of low purity and purge line		
	Generator screen control panel including alarm indicators.		
6	Oxygen buffer tank		
	Steel		
	Capacity: min. 1500 l		
	Max. operating pressure: at least 5 bar Normal operation pressure: app. 4 bar		
	Outlet filter to protect against zeolite dust particles and ensure medical quality oxygen		
7	Automatic change over from duty plant to stand by plant in case of duty line shut down or activated purge function		
8	Monitoring: Capability of connectivity with (Honeywell Trend) BMS with TCP/IP interface: 1 able to monitor alarm in compressor, dryer and oxygen generator 2 able to provide remote monitoring of oxygen purity, oxygen flow, dew point, pressure and all further important parameters.		
9	Booster system for filling of oxygen cylinders (<i>not part of the dual independent oxygen production lines</i>)		
	High pressure piston compressor		

	Max. outlet pressure 200 bar		
	Components to include: compressor, motor, start/stop buttons, running hour meter, high pressure safety shutdown, low inlet pressure shutdown, safety relief valves, pressure gauges .		
10	Filling ramp(s) for in total 10 oxygen cylinders <i>(not part of the dual independent oxygen production lines)</i>		
	High pressure manifold with individual isolation valves (tested for max. pressure 300 bar)		
	Protection from over-pressuring by safety relief valve.		
	With pressure gauge.		
	Able to fill 10 size J oxygen cylinders of 50 l (water capacity) with 130-150 bar within 15-17 hours		
11	Emergency manifold O2 – 2X10 comprised of Oxygen manifold header rack 2x4 O2 Bullnose (BS 341 No. 3) Top entry tailpipe.		
B	ACCESSORIES & CONSUMABLES		
1	All further specific items/accessories, required for the proper installation with interconnecting piping, wiring etc. (within the building to be constructed separately) and operation of the oxygen generator system above shall be specified and included in the offer.		
2	All standard maintenance tools and cleaning / lubrication materials as applicable shall be included.		
3	For connection from the building housing the oxygen generator system to the hospital's oxygen piping system the following components must be offered		
	30 meters medical grade type K dia. 35 mm copper pipe including fitting & brackets		
	75 meters medical grade type K dia. 28 mm copper pipe including fitting & brackets		
	4 line isolation valves – 28 mm (Beacon Medaes or equivalent)		

4	Portable oxygen purity analyser		
5	Oxygen consumption recorder		
C	STANDARD REQUIREMENTS AND INSTRUCTIONS		
1	Power supply with 3 phase 400 V 50 Hz is provided to the building to be constructed separately for housing the oxygen generator system. The overall power consumption for the complete oxygen generator system, including filling of oxygen cylinders, should be as small as possible and be specified by the bidder.		
2	The equipment supplied must be new		
3	<p>Installation in accordance with local regulations (under the responsibility of a manufacturer trained engineer) is required as follows:</p> <ul style="list-style-type: none"> - within the building to be constructed separately for all equipment, including all required electrical and piped connections taking into account----- - for the connection from this building to the hospital's oxygen piped system, using the items under B3 above. <p>The oxygen generation system must be made fully functioning at site.</p> <p>For bidder's guidance the drawing in the bidding documents shows the horizontal dimensions of the building to be constructed separately along with indicative layout of the expected equipment.</p> <p>Upon award of contract the supplier must provide a lay-out drawing for the installation of all equipment, along with details required for fitting / connecting within the building, which the Purchaser must provide in the building to be constructed. Upon acceptance by the Purchaser this document will be binding on both parties.</p> <p>Upon completion of installation the supplier must update and submit the plant installation shop drawing "as built", i. e. as actually installed</p> <p>Suppliers shall comply with and ensure that all their staff, local agents, subcontractors comply during installation/commissioning with core labour standards, consistent with applicable laws and regulations in the Purchaser's country, including the fundamental conventions of the International Labour Organization (ILO).</p>		

	<p>During installation/commissioning the Supplier must ensure as applicable that all involved staff is wearing protective gear (hard hats, protective shoes, protective clothing, protective gloves, etc.).</p> <p>Suppliers shall comply with and ensure that all their staff, local agents, subcontractors comply during installation/commissioning with international environmental standards, consistent with applicable laws and regulations in the Purchaser's country, including international environmental treaties.</p>		
4	<p>Preventive and corrective maintenance for the complete system must be provided during two years from acceptance, including required spare parts / consumables. The preventive maintenance schedule shall be in accordance with manufacturer's recommendations.</p> <p>Bidder to provide a brief description of how the maintenance requirement will be executed.</p>		
5	The oxygen generation system is to comply with ISO 7396-1, ISO 8573-1 Class 1-4-1, ISO 8573-1 Class 1-2-1, PED 2014/68/EU.		
6	A user's operations manual and maintenance manual in English must be supplied with each unit of equipment, as well as a list of spare parts and consumable items with part no. details clearly indicated.		
7	<p>The system offered shall be designed to operate normally under the conditions of the purchaser's country. The conditions include Power Supply with fluctuations, Climate, Temperature, Humidity, etc.</p> <p><i>Protection against power fluctuation must be provided for critical equipment and specified in the bid.</i></p>		
D	NOTE		
1	Bidders may propose any product/system, which is equivalent or better than the requirements specified above.		
E	DOCUMENTATION for inclusion in bid		
1	Bidder should provide the following documents as relevant for bid submission and refer to these in column 4 of this TSF.		
2	Brochures or catalogues		

3	Technical data sheet		
F	TRAINING ON EQUIPMENT SUPPLIED		
1	Immediately after installation of the complete system on-site training must be provided for AKHST engineer		
2	The training must include the following elements and information:		
3	Equipment orientation / functions		
4	Application & operation of the equipment;		
5	Simple aspects/steps in troubleshooting of errors;		
6	User maintenance of the equipment;		
7	Safety aspects of the equipment (as applicable);		
8	As relevant: Equipment Operation Procedures		

4. Drawings

These Bidding Documents include one drawing as below.

For bidder's guidance the drawing shows the horizontal dimensions of the building to be constructed separately along with indicative layout of the expected equipment.



5. Inspections and Tests

The following inspections and tests shall be performed:

Inspection required during installation

- 1- Pressure testing of oxygen piping
- 2- Electrical inspections from Electrical inspector
- 3- Inspection and reports of entire plan based on manufacturer guidelines (plant operating inspection and test, oxygen purity tests etc)

6. Distribution of Goods

The Goods shall be distributed to the following recipients and destinations:

List of Recipients			
Recipient			
No.	Official Name	Address & Communication	Contact Person
1	Aga Khan University Hospital	3 rd Parklands, Nairobi, Kenya	Stephen Wachira

PART 3 - Contract

Section VIII. General Conditions of Contract

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Section VIII. General Conditions of Contract¹

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “KfW” means the KfW Entwicklungsbank;
- (b) “Contract” means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;
- (c) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto;
- (d) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract;
- (e) “Day” means calendar day;
- (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract;
- (g) “GC” means the General Conditions of Contract;
- (h) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract;
- (i) “Purchaser’s Country” is the country **specified in the Particular Conditions of Contract (PC)**;
- (j) “Purchaser” means the entity purchasing the Goods and Related Services, as **specified in the PC**;
- (k) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract;
- (l) “PC” means the Particular Conditions of Contract;
- (m) “Subcontractor” means any natural person, private or state entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier;
- (n) “Supplier” means the natural person, private or state entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement;

¹ [Text in this Section shall not be modified.]

- (o) "The Named Place of Destination"/"Project Site," where applicable, means the place(s) **named in the PC**.
- 2. Contract Documents** 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.
- 3. Fraud and Corruption** 3.1 The KfW requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix 1 to the PC.
- 4. Interpretation** 4.1 If the context so requires it, singular means plural and vice versa.
- 4.2 Incoterms
- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms;
- (b) The terms CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms **specified in the PC** and published by the International Chamber of Commerce in Paris, France.
- 4.3 Entire Agreement
- The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.
- 4.4 Amendment
- No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.
- 4.5 Nonwaiver
- (a) Subject to GC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract;
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

- 4.6 **Severability**
- If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.
5. **Language**
- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language **specified in the PC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.
6. **Joint Venture, Consortium or Association**
- 6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser. The designated party to act as lead firm with full authority shall be **specified in the PC**.
7. **Eligibility**
- 7.1 All Goods and Related Services to be supplied under the Contract and financed by the KfW shall have their origin in any eligible source as **specified in the PC**. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.
8. **Notices**
- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address **specified in the PC**. The term "in writing" means communicated in written form with proof of receipt.
- 8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.
9. **Governing Law**
- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser's Country, unless otherwise **specified in the PC**.
10. **Settlement of Disputes**
- 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

- 10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the PC**.
- 10.3 Notwithstanding any reference to arbitration herein,
- (a) The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) The Purchaser shall pay the Supplier any monies due the Supplier.
- 11. Inspections and Audit by the KfW**
- 11.1 The Supplier shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep accurate and systematic accounts and records, in respect of the Goods in such form and details as will clearly identify relevant time changes and costs.
- 11.2 The Supplier shall permit, and shall cause its Subcontractors and consultants to permit, the KfW and/or persons appointed by the KfW to inspect the Supplier's offices and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the KfW if requested by the KfW.
- 12. Scope of Supply**
- 12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.
- 13. Delivery and Documents**
- 13.1 Subject to GC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are **specified in the PC**.
- 14. Supplier's Responsibilities**
- 14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GC Clause 12, and the Delivery and Completion Schedule, as per GC Clause 13.
- 15. Contract Price**
- 15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments **authorized in the PC**.

- 16. Terms of Payment and Reimbursement**
- 16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as **specified in the PC**.
- 16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GC Clause 13 and upon fulfillment of all other obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.
- 16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the bid price is expressed.
- 16.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period **set forth in the PC**, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate **shown in the PC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.
- 16.6 In the event of any reimbursement, guarantee or similar claimable payments and any insurance payments under this Contract, payment shall be effected as **specified in the PC**.
- 17. Taxes and Duties**
- 17.1 For goods manufactured outside the Purchaser's Country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.
- 17.2 For goods manufactured within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country as **specified in the PC**, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
- 18. Performance Security**
- 18.1 The Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount **specified in the PC**.
- 18.2 The proceeds of the Performance Security shall be payable to the Purchaser pursuant to GC 16.6 (reimbursement) as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 The Performance Security shall be denominated in the currency(ies) of the Contract, and shall be in one of the format **stipulated by the Purchaser in the PC**, or in another format acceptable to the Purchaser.

18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless **specified otherwise in the PC**.

19. Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

20. Confidential Information

20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GC Clause 20.

20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.

20.3 The obligation of a party under GC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- (a) The Purchaser or Supplier need to share with the KfW or other institutions participating in the financing of the Contract;
- (b) Now or hereafter enters the public domain through no fault of that party;
- (c) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

- (d) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting

21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GC Clauses 3 and 7.

22. Specifications, Standards and Spare Parts

22.1 Technical Specifications and Drawings

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VII, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GC Clause 33.

22.2 Spare Parts

- (a) The Supplier shall carry sufficient inventories to assure ex-stock supply of consumables and consumable spares. Other spare parts and components shall be supplied as promptly as possible but in any case within the number of days **specified in the PC** of placement of order.
- (b) The Supplier shall be for a period of years **specified in the PC** from the date of delivery and commissioning under obligation to supply spare parts. However, the

Supplier shall, in the event of termination of production of the spare parts:

- (i) Send an advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and
- (ii) Furnish, following such termination, at no cost to the Purchaser, the blueprints, drawings and specifications of the spare parts, if and when requested.

23. Packing and Documents

23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their named place of destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' named place of destination and the absence of heavy handling facilities at all points in transit.

23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, **specified in the PC**, and in any other instructions ordered by the Purchaser.

24. Insurance

24.1 Unless otherwise **specified in the PC**, the Goods supplied under the Contract shall be fully insured - in the currency(ies) of the Contract from an eligible country - against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner **specified in the PC**.

25. Transportation

25.1 Unless otherwise **specified in the PC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, **specified in PC**:

- (a) Performance or supervision of on-site assembly and/or start-up of the supplied Goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
- (d) Performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties,

provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and

- (e) Training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

26. Inspections and Tests

26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are **specified in the PC**.

26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, and/or at the Goods' named place of destination, or in another place in the Purchaser's Country as **specified in the PC**. Subject to GC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

- 26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GC Sub-Clause 26.4.
- 26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.
- 27. Liquidated Damages**
- 27.1 Except as provided under GC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in the PC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage **specified in those PC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GC Clause 35.
- 28. Warranty**
- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of named place of destination.
- 28.3 Unless otherwise **specified in the PC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the named place of destination **indicated in the PC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 28.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such notice, the Supplier shall, within the period **specified in the PC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **PC**, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

29. Patent Indemnity

29.1 The Supplier shall, subject to the Purchaser's compliance with GC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

(a) The installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and

(b) The sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.
- 30. Limitation of Liability**
- 30.1 Except in cases of criminal negligence or willful misconduct,
- (a) The Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
 - (b) The aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the purchaser with respect to patent infringement
- 31. Change in Laws and Regulations**
- 31.1 Unless otherwise specified in the Contract, if after the date of twenty-eight (28) days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GC Clause 15.
- 32. Force Majeure**
- 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not

foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

33. Change Orders and Contract Amendments

33.1 The Purchaser may at any time order the Supplier through notice in accordance GC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) Drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) The method of shipment or packing;
- (c) The place of delivery; and
- (d) The Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

34. Extensions of Time

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in

which case the extension shall be ratified by the parties by amendment of the Contract.

- 34.2 Except in case of Force Majeure, as provided under GC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GC Clause 27, unless an extension of time is agreed upon, pursuant to GC Sub-Clause 34.1.

35. Termination

35.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
 - (i) If the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GC Clause 34;
 - (ii) If the Supplier fails to perform any other obligation under the Contract; or
 - (iii) If the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

35.3 Termination for Convenience

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the

Supplier under the Contract is terminated, and the date upon which such termination becomes effective;

- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
 - (i) To have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

36. Assignment

36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

**37. Export
Restriction**

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser and of the KfW that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 35.3.

Section IX. Particular Conditions of Contract

The following Particular Conditions of Contract (PC) shall supplement and / or amend the General Conditions of Contract (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

[The Purchaser shall select / insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics.]

GC 1.1(i)	The Purchaser's country is: <i>[Insert name of the Purchaser's Country]</i>
GC 1.1(j)	The Purchaser is: <i>[Insert complete legal name of the Purchaser]</i>
GC 1.1 (o)	<p>The Named Place of Destination(s) is/are: <i>[Insert name(s) and detailed information on the location(s) for import purposes (CIP delivery)]</i></p> <p>The Project Site(s) is/are: <i>[Insert name(s) and detailed information on the location(s) of the site(s) for final delivery, installation and training purposes]</i></p>
GC 4.2	<p>The version edition of Incoterms shall be Incoterms 2010. <i>[Update when required]</i></p> <p>However, the definition of the place and date associated with "delivery" is modified as follows:</p> <ul style="list-style-type: none"> (a) Under "CIP" Incoterms defines "delivery" as the place and date where risk transfers from the seller to the buyer. (b) In these Bidding Documents, when using "CIP" and not referring to the transfer of risk, the term "delivery" shall be interpreted as the date and place where the Goods and Related Services arrive at the named place of destination, and this date shall be reflected in the Delivery and Completion Schedule.
GC 5.1	The governing and communication language shall be English.
GC 6.1	The designated party to act as lead firm with full authority is: <i>[Insert complete legal name of the lead firm]</i>
GC 7.1	<p>Goods and services from countries under embargo from Germany, the European Union or the United Nations are not eligible.</p> <p>Goods and services from countries which are legally barred in the country of the contracting agency.</p>

GC 8.1	<p>For notices, the Purchaser's address shall be:</p> <p>Attention: <i>[Insert full name of person, if applicable]</i></p> <p>Street Address: <i>[Insert street address and number]</i></p> <p>City: <i>[Insert name of city or town]</i></p> <p>ZIP Code: <i>[Insert postal ZIP code, if applicable]</i></p> <p>Country: <i>[Insert name of country]</i></p> <p>Telephone: <i>[Include telephone number, including country and city codes]</i></p> <p>Electronic mail address: <i>[Insert e-mail address, if applicable]</i></p> <p>For notices, the Supplier's address shall be:</p> <p>Attention: <i>[Insert full name of person, if applicable]</i></p> <p>Street Address: <i>[Insert street address and number]</i></p> <p>City: <i>[Insert name of city or town]</i></p> <p>ZIP Code: <i>[Insert postal ZIP code, if applicable]</i></p> <p>Country: <i>[Insert name of country]</i></p> <p>Telephone: <i>[Include telephone number, including country and city codes]</i></p> <p>Electronic mail address: <i>[Insert e-mail address, if applicable]</i></p>
GC 9.1	The governing law shall be the law of: <i>the Purchaser's country</i>
GC 10.2	<p>The rules of procedure for arbitration proceedings pursuant to GC Clause 10.2 shall be as follows:</p> <p><i>[The bidding documents should contain one clause to be retained in the event of a Contract with a foreign Supplier and one clause to be retained in the event of a Contract with a Supplier who is a national of the Purchaser's country. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GC 10.2 in the bidding document.</i></p> <p><i>"Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Supplier and clause 10.2 (b) shall be retained in the case of a Contract with a national of the Purchaser's country."</i></p> <p>(a) Contract with foreign Supplier:</p> <p><i>[For contracts entered into with foreign suppliers, International commercial arbitration may have practical advantages over other dispute settlement methods. The KfW should not be named as arbitrator, nor should it be asked to name an arbitrator. Among the rules to govern the arbitration proceedings, the Purchaser may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC).]</i></p> <p><i>If the Purchaser chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</i></p>

	<p>GC 10.2—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p><i>If the Purchaser chooses the Rules of ICC, the following sample clause should be inserted:</i></p> <p>GC 10.2—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p> <p>(b) Contracts with Supplier national of the Purchaser's country:</p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser's country.</p>
GC 12	<p>The scope of supply includes maintenance services for items of equipment as specified in Section VI Schedule of Requirements of the bidding documents.</p> <p>For maintenance services the Attachment 2 to PCC provides "SPECIAL CONDITIONS OF SERVICE CONTRACT FOR PREVENTIVE AND/OR CORRECTIVE MAINTENANCE"</p>
GC 13.1	<p>For Goods supplied from abroad:</p> <p>Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by cable or by electronic way previously agreed between the parties the full details of the shipment, including contract number, description of Goods, quantity, the mode of transport, the bill of lading number and date, place of loading, date of shipment, place of discharge, etc. The Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:</p> <ul style="list-style-type: none"> (i) Original and <i>[Insert number of copies]</i> copies of the Supplier's invoice¹ showing Goods' and Related Services' description, quantity, unit price, total amount, number of packages, names of the exporter and the consignee; Goods and Related Services must be carefully described (accurate, specific, and complete description of merchandise); (ii) Original negotiable and <i>[Insert number of copies]</i> non-negotiable copies (stamped and dated according to the original) of the clean, on-board bill of lading marked "freight prepaid" or equivalent (air waybill, road waybill, FCR, CMR), showing gross and net weights, volume of measurement, marks and identification, name and address of importer of consignee; (iii) Original and <i>[Insert number of copies]</i> copies of the packing list identifying contents of each package; packing and weighing list shall describe accurately and in detail the contents of each package / case included in the shipment and give the net and gross weights;

¹ If required for due process (e.g. customs clearance in the Purchaser's country), the invoice can be split into two invoices, one showing CIP values and the other local services (inland transportation, installation, training, etc.).

	<p>(iv) Original insurance certificate;</p> <p>(v) Original Manufacturer's or Supplier's warranty certificate;</p> <p>(vi) Original inspection certificate, issued by the nominated inspection agency <i>[If applicable, otherwise delete]</i>, and the Supplier's factory inspection report;</p> <p>(vii) Certified certificate of origin: original and <i>[Insert number of copies]</i> copies; origin to be certified by the Chamber of Commerce in the supplier's country; and</p> <p>(viii) Any other document that may be required in specific cases.</p> <p>The above documents shall be received by the Purchaser at least one week before arrival of the Goods at the place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.</p> <p>For Goods from within the Purchaser's country:</p> <p>Upon delivery of the Goods EXW or to the transporter, the Supplier shall notify the Purchaser and submit the following documents to the Purchaser:</p> <p>(i) Original and <i>[Insert number of copies]</i> copies of the Supplier's invoice showing Goods' and Related Services' description, quantity, unit price, and total amount;</p> <p>(ii) Original delivery note, railway receipt, or truck receipt;</p> <p>(iii) Original insurance certificate <i>[If applicable, otherwise delete]</i>;</p> <p>(iv) Original Manufacturer's or Supplier's warranty certificate;</p> <p>(v) Original inspection certificate, issued by the nominated inspection agency <i>[If applicable, otherwise delete]</i>, and the Supplier's factory inspection report;</p> <p>(vi) Certified certificate of origin: original and <i>[Insert number of copies]</i> copies; origin to be certified by the Chamber of Commerce in the supplier's country; and</p> <p>(vii) Any other document that may be required in specific cases.</p> <p>The above documents shall be received by the Purchaser before shipping of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
GC 15.1	<p>The prices charged for the Goods supplied and the related Services performed <i>shall not</i> be adjustable.</p>
GC 16.1	<p>GC 16.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>Methods of Payment:</p> <p>Payments shall be made using the KfW's Disposition Funds procedure.</p> <p>Payment for Goods supplied from abroad:</p> <p>Payment of foreign currency portion shall be made in <i>[Insert currency of the Contract Price; the default currency is Euro (EUR)]</i> in the following manner:</p>

	<p>(i) Advance Payment²: <i>Twenty (20)</i> percent of the Contract Price, excluding maintenance services, shall be paid through the payment method stipulated above within thirty (30) days of signing of the Contract by both parties, against submission of a satisfactory Performance Guarantee, and upon submission of a claim and a satisfactory Advance Payment Guarantee for equivalent amount valid until the Goods are delivered to the final destination(s); guarantees shall be in the form provided in the bidding documents;</p> <p>(ii) On Delivery: <i>Seventy (70)</i> percent of the Contract Price of the Goods delivered and Related Services, except maintenance services, provided shall be paid through the payment method stipulated above within thirty (30) days from inspection of the Goods by the Purchaser (typically done after release of the goods from customs), upon (i) submission of documents specified in GC Clause 13, (ii) presentation of the Purchaser's inspection certificate, and (iii) subject to a satisfactory Performance Guarantee; together with this payment the Advance Payment Guarantee shall be released; and</p> <p>(iii) On Acceptance: <i>Ten (10)</i> percent of the Contract Price of Goods and Related Services received, except maintenance services, shall be paid through the payment method stipulated above within thirty (30) days of receipt of the Goods and completion of the Related Services at the final destination(s) upon submission of claim supported by the provisional acceptance certificate issued by the Purchaser [which shall be issued by the Purchaser within fifteen(15) days from the successful distribution/installation/commission/training (whichever is the latter)], and subject to a satisfactory Performance Guarantee covering the warranty period.</p> <p>Payment of local currency portion shall be made in <i>[Insert currency of the local currency portion, if any, of the Contract Price; if not applicable, delete this text portion]</i> within thirty (30) days of presentation of claim supported by a certificate from the Purchaser declaring that the Goods have been delivered and that all other contracted Services have been performed.</p> <p>Payment for Goods and Services supplied from within the Purchaser's country:</p> <p>Payment for Goods and Services supplied from within the Purchaser's country shall be made in <i>[Insert currency of the Contract Price]</i>, as follows:</p> <p>(i) Advance Payment²: Ten (10) percent of the Contract Price, except maintenance services, shall be paid through the payment method stipulated above within thirty (30) days of signing of the Contract by both parties, against submission of a satisfactory Performance Guarantee, and upon submission of a claim and a satisfactory Advance Payment Guarantee for equivalent amount valid until the Goods are delivered to the final destination(s); guarantees shall be in the form provided in the bidding documents;</p> <p>(ii) On Delivery: Eighty (80) percent of the Contract Price of the Goods delivered and Related Services provided, except maintenance services, shall be paid through the payment method stipulated above</p>
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² For off-the-shelf items with short EXW/CIP delivery time, this payment will be made together with the payment described in (ii); this also applies to smaller value contracts where the Supplier does not wish to receive an advance payment.

	<p>within thirty (30) days from provisional acceptance of the Goods by the Purchaser [typically done after delivery to and installation/commissioning/training at the final destination(s)], upon (i) submission of documents specified in GC Clause 13, (ii) presentation of the Purchaser's provisional acceptance certificate [which shall be issued by the Purchaser within fifteen(15) days from the successful distribution/installation/commission/training (whichever is the latter)], and (iii) subject to a satisfactory Performance Guarantee; together with this payment the Advance Payment Guarantee shall be released;</p> <p>On Final Acceptance: The remaining ten (10) percent of the Contract Price , except maintenance services, shall be paid to the Supplier within thirty (30) days from the date of the final acceptance certificate (typically issued after completion of the warranty period) for the respective delivery issued by the Purchaser; subject to a satisfactory Performance Guarantee covering the full warranty period, this payment shall be made together with (ii) above.</p> <p>For payment for maintenance services refer to Attachment 2 to PCC: "SPECIAL CONDITIONS OF SERVICE CONTRACT FOR PREVENTIVE AND/OR CORRECTIVE MAINTENANCE"</p>
GC 16.1	<p>Payment to the Supplier of the amounts due in each currency shall be made into the following bank accounts:</p> <p><i>[Insert bank account details at the time of contract signing]</i></p>
GC 16.5	<p>GC 16.5 does not apply to this Contract, and no interest payments will be made.</p>
GC 16.6	<p>Reimbursement payments shall be made to KfW to the following bank account:</p> <p>Account holder: KfW Entwicklungsbank Account number: 38 000 000 00 Branch code (BLZ): 500 204 00 Account number (IBAN): DE53 5002 0400 3800 0000 00 SWIFT/BIC: KFWIDEFF</p> <p>Payment to be made for the account of the <i>[Insert complete legal name of the Purchaser]</i> of <i>[Insert name of the Purchaser's Country]</i>.</p>
GC 17.3	<p>The following taxes, duties and fees exemptions apply to the Contract: <i>[Insert list of tax exemptions for goods supplied from abroad, for goods supplied within the Purchaser's country, and for related services, or state "none" if no such tax exemptions are available]</i></p>
GC 18.1	<p>The amount of the Performance Security shall be: 10 % of the Contract Price</p>

GC 18.3	<p>The Performance Security shall be in the form of “a <i>Bank Guarantee</i>” or “a <i>Performance Bond</i>”</p> <p>The Performance security shall be denominated in <i>the currencies of payment of the Contract, in accordance with their portions of the Contract Price</i></p>
GC 22.2(a)	The number of days shall be: 15
GC 22.2 (b)	The number of years shall be: 7
GC 23.2	The packing, marking and documentation within and outside the packages shall be: <i>[Insert in detail the type of packing required, the markings in the packing and all documentation required].</i>
GC 24.1	<p>The insurance coverage shall be as follows:</p> <p>Up to <i>[Insert name of the Purchaser's Country]</i> “(final destination/s) in an amount equal to 110% of the Contract Price <i>[CIP/EXW value plus all required local services]</i> from “warehouse to warehouse” on “All Risks” basis including War Risks and Strike Clauses. The Institute War Clauses do not apply for land transport (rail or road).</p> <p>Any payments of the insurer are to be made to KfW for the account of <i>[Insert name of the Purchaser's Country]</i> to the extent that the risk has already come to lie with the Purchaser. The insurance certificate/policy must include the following Clause:</p> <p>“In the event of any claim under this insurance policy, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ/Branch Code 500 204 00), Account No. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00) for account of <i>[Insert complete legal name of the Purchaser]</i> of <i>[Insert name of the Purchaser's Country]</i>”.</p>
GC 25.1	Responsibility for transportation of the Goods shall be as specified in the Incoterms.
GC 25.2	<p>Incidental services to be provided are:</p> <p><i>[Selected services covered under GC Clause 25.2 and/or other should be specified with the desired features. The price quoted in the bid price or agreed with the selected Supplier shall be included in the Contract Price.]</i></p>
GC 26.1	The inspections and tests shall be: <i>as specified in Section VII - Schedule of Requirements</i>
GC 26.2	The Inspections and tests shall be conducted at: Aga Khan University Hospital, Nairobi, Kenya
GC 27.1	The liquidated damage shall be: 0.5% % per week
GC 27.1	The maximum amount of liquidated damages shall be: 10% %

GC 28.3	<p>The period of validity of the Warranty shall be: <i>24 months</i> from acceptance of the Goods or <i>30 months</i> from the date of shipment, whichever occurs earlier.</p> <p>For purposes of the Warranty, the named place(s) of destination(s) shall be:</p> <p>Aga Khan University Hospital, Nairobi, Kenya</p>
GC 28.5 and GC 28.6	<p>The period for repair or replacement shall be: <i>30 days</i>.</p>

Attachment 1 to Particular Conditions of Contract

KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

1) Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

- Fraudulent Practice** Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
- Obstructive Practice** Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
- Sanctionable Practice** Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

2) Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation³ (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence..

³ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

Attachment 2:

SPECIAL CONDITIONS OF SERVICE CONTRACT FOR PREVENTIVE AND/OR CORRECTIVE MAINTENANCE

1 OBJECTIVE

- 1.1 The purpose of the Special Conditions Service Contract for Preventive and/or Corrective Maintenance is to detail the works of the maintenance contract for medical laboratory equipment and to establish the standard of work.
- 1.2 This contract covers maintenance services including all wear and tear spare parts for two years after acceptance of goods (i.e. covering the warranty period). The service contract period shall commence on the day after the date of the Acceptance Certificate for the concerned equipment and expires two years later.
- 1.3 It is the intention of the Aga Khan University Hospital, Nairobi, Kenya as Contracting Authority that the repair, planned preventive maintenance, testing and re-commissioning for the equipment will be implemented using appropriate techniques to ensure the maximum efficiency and long term benefit from all supplied goods.

2 EXECUTING AGENT(S) ON BEHALF THE CONTRACTOR

3 CONTRACT SUPERVISOR FOR THE CONTRACTING AUTHORITY

4 DESCRIPTION OF THE EQUIPMENT TO BE MAINTAINED

The equipment to be maintained and type of maintenance services is stated in Part VII, Schedule of Requirements of the bidding documents.

5 DESCRIPTION OF SERVICES TO BE SUPPLIED

- 4.1 Preventive and/or Corrective maintenance of the equipment as stated in Part VII, Schedule of Requirements of the bidding documents.
- 4.2 The Contractor shall provide a copy of the preventive maintenance checklist, method and procedures, which shall be in accordance with manufacturer's recommendations.

5 PAYMENT

- 5.1 50% of the Service Contract for Preventive and/or Corrective Maintenance cost as per Contractor's bid (i.e. -----) will be paid per year after acceptance of the concerned services for equipment, upon receipt of a commercial invoice.

6 PREVENTIVE MAINTENANCE

- 6.1 For equipment specified in Part VII, Schedule of Requirements of the bidding documents for preventive maintenance, the Contractor shall provide a Planned Preventive Maintenance (PPM) Schedule. The PPM schedule should provide a timetable (with a minimum of one visit per year) with a short description of activities to be performed. The PPM schedule shall include each designated article of the Schedule of Requirements. Equipment or articles, which are part of the designated equipment, shall be mentioned as a separate article.

- 6.2 The Contractor shall prepare a Planned Preventive Maintenance Protocol for every single article or part of the article as designated in the Schedule of Requirements. The Maintenance Protocol shall contain a detailed listing of all maintenance procedures, and the frequency required for each of these procedures. The printed procedures should be classified and indexed in an ordered filing system. The Maintenance Protocol shall be in accordance with the stipulations in the manufacture's maintenance manual/recommendations of the equipment.

7 CORRECTIVE MAINTENANCE

In addition to the regular maintenance programme the Contractor shall send suitable service personnel to carry out repairs or adjustments at any time when requested to do so by the Purchaser.

8 FIRST LINE MAINTENANCE

- 8.1 The Contractor shall instruct staff of the respective beneficiary laboratories in the First- Line Maintenance of the equipment. First Line Maintenance includes: every-day maintenance, visual check on proper function of vital parts, and ability to recognise and define technical problems for communication with the contractor.
- 8.2 The Contractor shall prepare and leave on the site the algorithm of FLM for each equipment item in the English language.

9 STAFF

- 9.1 The Contractor will provide qualified professional engineers who are competent and experienced in the preventive maintenance of medical laboratory equipment, its repair, maintenance, testing and re-commissioning and calibration together with the appropriate 'back-up' staffing as is required.
- 9.2 All Contractors' staff shall report to the authorised officer on arrival and departure from the premises. Visits to the location of the equipment are not permitted without the consent of the authorised officer.
- 9.3 The Contractor shall cause as little interference as possible with other activities on the premises.
- 9.4 The Contractor shall instruct its staff about fire risks and require them not to smoke on the premises except where it is expressly permitted to do so.
- 9.5 The Contractor shall remove from the premises any of its staff where the respective authority requests this on grounds of efficiency or public interest.

10 SUPPLY OF SPARE PARTS

The Contractor will supply the parts required for the preventive and corrective maintenance. The price for the parts is included in the maintenance cost. Consumable materials required for the daily operation of the equipment are not the responsibility of the Contractor.

11 WARRANTY

- 11.1 The Contractor guarantees that the equipment is in good working condition after each preventive maintenance visit.
- 11.2 The Contracting Authority shall promptly notify the Contractor in writing of any claim arising under this warranty.
- 11.3 Upon receipt of such notice, the Contractor shall, with all reasonable speed, repair the malfunction without costs to the Contracting Authority..

12 REPORTING

After each visit the Contractor will provide a detailed report of the works performed and the parts used to the Contract Supervisor. This report has to be signed by the respective Contract Supervisor and is mandatory for payments.

13 TIME SCHEDULE

13.2 Preventive maintenance: as per manufacturer's recommendations with at least one visit per year.

13.2 Corrective maintenance; as required.

14 CONTRACT PERIOD

The service contract for preventive and corrective maintenance shall be valid per lot for a period of two years after acceptance of goods.

15 TOOLS

The Contractor will make available to his staff all tools required for the proper maintenance of the equipment.

16 DEFAULT BY CONTRACTOR

16.1 Without prejudice to any other right or remedy, if the Contractor does not provide the services in accordance with the specification or at the times specified in the contract the Contracting Authority may:

- (a) Terminate the contract;
- (b) Itself provide or procure the provision of the services until it is satisfied that the Contractor is able to carry out the services in accordance with these conditions.

16.2 If the cost to the Contracting Authority of executing or procuring such services exceeds the amount that would have been payable to the Contractor for executing or procuring such services, such excess shall be paid by the Contractor to the Contracting Authority in addition to any other sums payable by the Contractor to the Contracting Authority in respect of the breach of contract.

17 INDEMNITY

Without prejudice to its liability for breach of any of its obligations under the contract the Contractor shall be liable for and shall indemnify the Contracting Authority and any beneficiary laboratory against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:

- (a) Any loss of or damage to property (whether real or personal);
- (b) Any injury to any person, including injury resulting in death.

18 INSURANCE

The Contractor shall insure against its liability under condition 16 with Construction All Risk (CAR) insurance.

19 TRANSFER AND SUB-CONTRACTING

Neither party shall assign the whole or any part of the contract. Except for the use of executing agent(s) under clause 2 the Contractor shall not sub-contract the production or supply of any services without the previous consent in writing of the Contracting Authority, such consent not to be unreasonably withheld.

20 PATENTS, ETC.

- 20.1 The contract price shall include all royalties, license fees or similar expenses in respect of the making, use or exercise by the Contractor of any invention or design for the purpose of performing the contract.
- 20.2 The Contractor shall indemnify the Contracting Authority against any costs, claims, proceedings, expenses and demands arising from the use, manufacture, supply or delivery of any process, article, matter or thing supplied under the contract that would constitute any infringement of any right, patent, design, trademark or copyright.

Section X. Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

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Letter of Acceptance

[Use letterhead paper of the Purchaser]

[Insert date]

To: *[Insert name and address of the Supplier]*

Subject: **Notification of Award Contract No. *[Insert contract number]***

This is to notify you that your Bid dated *[Insert date]* for execution of the *[Insert name of the contract and identification number, as given in the PC]* for the Accepted Contract Amount of *[Insert contract price in numbers and words including code and name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by the undersigned Purchaser.

You are requested to furnish the Performance Security within twenty-eight (28) days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms, of the Bidding Documents.

Authorized Signature:

Name and Title of Signatory:

Name of Institution:

Attachment: Contract Agreement¹

¹ If the Purchaser cannot send the contract agreement together with the letter of acceptance, it must be sent electronically to the Supplier within a reasonable period of time not exceeding ten days; for the purpose of issuing the required Performance Guarantee, the supplier must be advised of the Contract date.

Contract Agreement

THIS AGREEMENT made

the *[Insert **number**]* day of *[Insert: **month**]*, *[Insert: **year**]*.

BETWEEN

- (1) *[Insert complete name of Purchaser]*, a/an *[Insert description of type of legal entity, for example, an agency of the Ministry of of the State of {Insert name of Country of Purchaser}, or corporation incorporated under the laws of {Insert name of Country of Purchaser}]* and having its principal place of business at *[Insert address of Purchaser]* (hereinafter called "the Purchaser"), and
- (2) *[Insert name of Supplier]*, a corporation incorporated under the laws of *[Insert: country of Supplier]* and having its principal place of business at *[Insert address of Supplier]* (hereinafter called "the Supplier").

WHEREAS the Purchaser invited bids for certain Goods and ancillary services, viz., *[Insert brief description of Goods and Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Services in the sum of *[Insert Contract Price in words and figures, expressed in the Contract currency(ies)]* (hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
 - (a) The Letter of Acceptance;
 - (b) The Bid Submission Form and Appendix to Bid Submission Form (including the signed Declaration of Undertaking);
 - (c) The Addenda Nos. _____ (if any);
 - (d) Particular Conditions of Contract, including Annex 1;
 - (e) General Conditions of Contract;
 - (f) The Specification (including Schedule of Requirements and Technical Specifications);
 - (g) The completed Bidding Forms (including Price Schedules); and
 - (h) Any other document listed in GC as forming part of the Contract.
3. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[Insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Purchaser²:

Signed: *[Insert signature]*

In the capacity of *[Insert title or other appropriate designation]*

In the presence of *[Insert identification of official witness]*

For and on behalf of the Supplier:

Signed: *[Insert signature of authorized representative(s) of the Supplier]*

In the capacity of *[Insert title or other appropriate designation]*

In the presence of *[Insert identification of official witness]*

² In cases where the Purchaser is different from the Beneficiaries of the Contract, it may be advisable to have authorized representatives from the Beneficiary Institutions sign as witnesses, accepting the Goods to be supplied.

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

Performance Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of supplier, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the supply of *[Insert object of the contract and brief description of Goods and related Services]* (hereinafter called "the Contract"). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required for *[Insert percentage in words and figures]* % of the contract price.

Waiving all objections and defenses, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]*³ upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

[For guarantees issued in foreign currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

[For guarantees issued in local currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

This guarantee shall expire not later than *[Insert expiry date]*⁴.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

³ This guarantee shall be issued in the contract currency only.

⁴ Pursuant to GC Clause 18.4 the guarantee shall be valid for at least 28 days from the date of contractual contract completion (including warranty obligations).

[As preferred option regarding guarantee rules insert⁵: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

Place, date

Guarantor's authorized signature(s)

⁵ In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

Advance Payment Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of supplier, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the supply of *[Insert object of the contract and brief description of Goods and related Services]* (hereinafter called "the Contract"). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[Insert amount and currency in words and figures]*⁶, representing *[Insert percentage in words and figures]* % of the contract price, is to be made against an advance payment guarantee.

Waiving all objections and defenses, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Applicant on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

[For guarantees issued in foreign currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

[For guarantees issued in local currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

This guarantee shall expire not later than *[Insert expiry date]*.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

⁶ This guarantee must be issued in the contract currency only.

[As preferred option regarding guarantee rules insert⁷: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

Place, date

Guarantor's authorized signature(s)

⁷ In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.